

**Jana Vanderbrink**

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**From:** Jana Vanderbrink  
**Sent:** Wednesday, January 03, 2007 4:08 PM  
**To:** Dienelt, John; 'Heller, Barry M.'; Diane Vallentine  
**Cc:** Sherri Lindfors; Jon Givens; Anita R. Tardugno  
**Subject:** Attached Draft of the Joint Memorandum due Jan. 5, 2007



JOINTmemo.pdf (34  
KB)

Mr. Givens would like to have your insert pursuant to his earlier email to you by January 4, 2007, so that we can file the attached memorandum with the Court on January 4 if possible.

Jana Vanderbrink, *Legal Secretary*  
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\*\*\*\*\*  
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA  
AT ANCHORAGE

ALASKA RENT-A-CAR, INC.,	)	
an Alaska Corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CENDANT CORPORATION, et al.,	)	
	)	
Defendants.	)	Case No. 3:03-cv-29 [TMB]

**JOINT MEMORANDUM PURSUANT TO THE ORDER AT DOCKET 297**

The Court, pursuant to the Minute Order From Chambers dated December 18, 2006, Docket 297, directed the parties to file a joint memorandum addressing certain issues.

**I. CORPORATE RELATIONSHIPS AND THE IDENTIFICATION OF THE FRANCHISOR/LICENSOR.**

**A. Corporate Relationships.**

Alaska Rent-A-Car is an independently owned Alaskan corporation which is not in the ownership structure of any of the defendant corporations. Alaska Rent-A-Car is a

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privately owned company owned by members of the Halcro family and an Employee Stock Ownership Plan. The defendant corporations' ownership structure and various identities are set forth on the attached organizational chart.<sup>1</sup> Additionally, attached as Exhibit B is an organizational chart indicating Alaska Rent-A-Car's position on the relationship of Alaska Rent-A-Car, Inc. to the various defendants. Additionally, attached as Exhibit C is an organizational chart indicating defendants' position on the relationship of Alaska Rent-A-Car, Inc. to the various defendants.

**B. The Identity of the Franchisor/Franchisee.**

The parties disagree as to the identity of the franchisor/licensor and therefore each side sets forth its respective position on the identity of the franchisor/licensor respectively.

**1. Alaska Rent-A-Car, Inc.'s contends the franchisors/licensors are Avis Budget Car Rental/CCRG, Avis Rent a Car System LLC/Inc. and Avis Car Rental Group LLC/Inc.**

Alaska Rent-A-Car contends that the current franchisor/licensor is Avis Budget Car Rental LLC f/k/a Cendant Car Rental Group, LLC f/k/a Cendant Car Rental Group, Inc. (hereinafter "Avis Budget Car Rental/CCRG"). The franchisor/licensor listed in the 1965 Exclusive License Agreements (hereinafter "ELAs") for Alaska Rent-A-Car is Avis, Inc.<sup>2</sup> The 1976 Amendment to the ELAs was executed by Avis, Inc.<sup>3</sup> Avis, Inc. currently known as Avis Car Rental Group, LLC and formerly known as Avis Car Rental Group, Inc. (hereinafter "Avis Car Rental Group") assigned the role of franchisor to Avis Rent a Car System, Inc. on May \_\_\_\_, 1965.<sup>4</sup>

In 2003 after the Budget acquisition, Avis Rent a Car System, Inc. and Avis Car Rental Group, Inc. were converted into their alter ego Avis Budget Car Rental/CCRG. Avis Rent a Car System, Inc. and Avis Car Rental Group, Inc. are both franchisors and

<sup>1</sup> Exhibit A

<sup>2</sup> See Docket \_\_\_\_, Exhibit \_\_\_\_ at p. 1-4.

<sup>3</sup> See Docket \_\_\_\_, Exhibit \_\_\_\_ at p. \_\_\_\_.

<sup>4</sup> See Docket \_\_\_\_, Exhibit \_\_\_\_, 1965 Assignment and cover letter thereto.

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licensors of Alaska Rent-A-Car and still legally obligated with such responsibilities, but all the employees who perform franchisor/licensor functions and responsibilities have been transferred to Avis Budget Car Rental/CCRG, and thus the alter ego Avis Budget Car Rental/CCRG performs all the functions of a franchisor.<sup>5</sup>

Alaska Rent-A-Car contends that its current franchisor/licensor is Avis Budget Car Rental/CCRG, and further Alaska Rent-A-Car contends Avis Rent A Car System, LLC f/k/a Avis Rent A Car System, Inc. and Avis Car Rental Group are also legally obligated as its franchisor/licensor. Alternatively, under the piercing and alter ego allegations, Alaska Rent-A-Car contends all defendants are the franchisor/licensor of Alaska Rent-A-Car, Inc.

Alaska Rent-A-Car has previously set forth evidence and arguments demonstrating its franchisors/licensors include (1) Avis Budget Car Rental/CCRG, (2) Avis Rent A Car System, LLC/Inc., and (3) Avis Car Rental Group. For convenience of the Court, the foregoing arguments and authority are set forth at:

- (1) Docket 163 at p. 45 and n. 283-286 and accompanying text, *see also* Docket 163 at pp. 15-17;
- (2) Docket 277 at pp. 45-46 and n. 190-195 and accompanying text;
- (3) Docket 199 at p. 3 and n. 11-15 and accompanying text;
- (4) Docket 172 at pp. 5-6 and n. 19-20 and accompanying text; **[also check the prior page, page 5 on footnote 18 and see if it suggests a licensor]**
- (5) Docket 164 at p. 11 and n. 56-57 and accompanying text;
- (6) Docket 279 at p. 40 and n. 142 and accompanying text;

<sup>5</sup> See Docket 279 Exhibit 30, October 16, 2006, interrogatory response number 9. *See also* Docket 279 p. 40, n. 142 and accompanying text.

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(7) *See also* Exhibit \_\_\_\_, attached to this joint memorandum; interrogatories dated October 9, 2006, interrogatory responses 2 and 4; *see also* interrogatory responses dated October 18, 2006, interrogatory responses 7, 8 and 9<sup>6</sup>; and

(8) *See also* Docket 183 at pp. 4-5, n. 17-18 and accompanying text.

**2. Defendants' contention as to the identification of the franchisor/licensor.**

[INSERT DEFENDANTS VERSION].

**II. STATUS REPORT ON DOCKET 178.**

The Court has asked whether the motion at Docket 178 is moot. Docket 178 at pages 1-3 seeks "I. Declaratory and Injunctive Relief is Appropriate to Ensure the Car Rental Business Retains its \$802,000,000." Since the Court is not addressing the piercing issue, this portion of the motion at Docket 178 is moot. Docket 178 pages 4-6 contains the portion of the motion addressing "II. Permanent Injunctive Relief Should be Granted and Joining Defendants From Associating Avis and Budget in their Corporate Names and Otherwise." This portion of Docket 178 is not moot as plaintiff continues to request the Court to grant permanent injunctive relief preventing the names Avis and Budget from being associated and further to prevent the joint marketing of Avis and Budget.

DATED this \_\_\_\_ day of January, 2007.

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<sup>6</sup> The foregoing interrogatories indicate all franchisor/licensor services are now provided by Avis Budget Car Rental/CCRG and that no such services are presently provided by Avis Rent A Car System, Inc. or Avis Car Rental Group, Inc. employees

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**CERTIFICATE OF SERVICE**

I hereby certify that on \_\_\_\_\_ a copy of foregoing \_\_\_\_\_  
was served electronically on Diane F. Vallentine and John F. Dienelt and on

Barry M. Heller  
DLA Piper US LLP  
1200 Nineteen Street NW  
Washington, DC 20036-2430

by regular U.S. Mail

s/Jon T. Givens \_\_\_\_\_

Joint Memorandum Pursuant to the Order at Docket 297  
*Alaska Rent-A-Car, Inc. v. Cendant Corp., et al.*, Case No. 3:03-cv-29 [TMB]  
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Page 5 of 5

EXHIBIT 8  
Page 6 of 6